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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/792,036	03/03/2004	Frank Francavilla	EXPAC 3.0-001 CIP	4800
530 7590 11/28/2007 LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			EXAMINER CARTAGENA, MELVIN A	
			ART UNIT 3754	PAPER NUMBER
			MAIL DATE 11/28/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/792,036

Applicant(s)

FRANCAVILLA ET AL.

Examiner

Melvin A. Cartagena

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-63 is/are pending in the application.
- 4a) Of the above claim(s) 62 and 63 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 34-61 is/are allowed.
- 6) ☒ Claim(s) 1-15, 17-21 and 23-36 is/are rejected.
- 7) ☒ Claim(s) 2-5, 16, 22 and 27 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 6, 8, 10-15, 17, 19, 21, 23-26, 28, 30, 32 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by US 6,554,520 to Tsuchiya.

Tsuchiya shows an instrument for applying a fluid as seen in Figs. 2 and 3, having a tapered fluid insert 20 for housing a fluid with a first end 21 and second end 20a, a protruding ridge 24 arranged on the exterior of the container between the first and second end, an outer casing 10 receiving the fluid insert and having a pump actuating surface 11, an applicator tip 11a and a ridge 10c, when assembled the protruding ridge 24 is located between the first end of the outer casing and the casing interior ridge 10c, a pump 22 arranged at the first end, the fluid insert is movable within the outer casing to actuate the pump, see column 5, lines 16-22, a dispenser cap 14, a brush element, see column 4, lines 1 and 2, a ridged seal plug 30 and a dispenser cap 14.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 9, 20 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,554,520 to Tsuchiya in view of US 6,592,282 to Fontanet et al.

Tsuchiya shows all claimed features as discussed above except for an instrument with an applicator in the form of a scrubbing pad. Fontanet shows an instrument for applying fluids, as seen in Fig. 1, with an applicator 103 in the form of a scrubbing pad. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to substitute the applicator brush of Tsuchiya for a scrubbing pad to use the instrument for applying a cosmetic product in the face of a user as taught by Fontanet.

5. Claims 7, 18 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,554,520 to Tsuchiya in view of US 5,295,601 to Bostelman.

Tsuchiya shows all claimed features as discussed above except for the dispensing cap of the instrument having a declogger to fit within the applicator opening. Bostelman shows a cap for a dispenser, as seen in Fig. 1, having a declogger 18. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify the cap of the device of Tsuchiya to include a declogger to prevent blockage within the applicator tube as taught by Bostelman.

***Allowable Subject Matter***

6. Claims 34-61 are allowed.
7. Claims 2-5, 15, 16, 22 and 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

8. Applicant's arguments filed September 13, 2007 have been fully considered but they are not persuasive. In response to the applicant's arguments that the device of Tsuchiya lacks a pump, note that the fluid from the device of Tsuchiya is ejected from the reservoir into the applicator; The fluid does not flow under the influence of gravity, the fluid is in fact pumped from the reservoir, see column 4, lines 17-20; Therefore, the element 22 in the device of Tsuchiya is a pump.

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin A. Cartagena whose telephone number is (571) 272-4924. The examiner can normally be reached on T-F (7:30AM to 6:00 PM).

Application/Control Number:  
10/792,036  
Art Unit: 3754

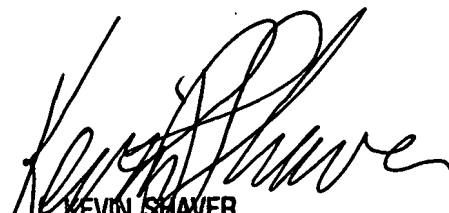
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MAC 11/21/07

MAC

  
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